



IN THE  
Supreme Court of the United States

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OCTOBER TERM, 1945.

No. ....

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LOS ANGELES SOAP COMPANY, a Corporation,  
*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,  
*Respondent.*

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BRIEF IN SUPPORT OF PETITION FOR WRIT  
OF CERTIORARI.

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**Opinions of the Courts Below.**

The judgment of the United States District Court for the Southern District of California, Central Division, was favorable to the Petitioner. The opinion of the District Court is dated March 28, 1944. It is reported in 56 Fed. Supp. 260. [R. 30.]

The judgment of the Circuit Court of Appeals for the Ninth Circuit in the matter was adverse to the Petitioner. The opinion of the Circuit Court is reported in ..... F. (2d) ..... The opinion is dated January 29, 1946, and was filed on the same date. [R. 90.] The case has not been reported to date.

For the convenience of the Court, the Petitioner annexes hereto in the appendix copies of the opinions of the Dis-

trict Court and of the Circuit Court of Appeals for the Ninth Circuit.

A petition for rehearing was denied by the Circuit Court of Appeals on March 1, 1946. [R. 99.]

### **Jurisdiction.**

1. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended, 43 Stat. 938, 28 U. S. C. A., Sec. 347; Rev. Stat., Sec. 1008 as amended, 28 U. S. C. A., Sec. 350.

2. The date of entry of the judgment of the Circuit Court of Appeals for the Ninth Circuit herein sought to be reviewed is January 29, 1946. [R. 98, 99.] The petition for rehearing was denied on March 1, 1946. [R. 99.]

### **Statement of the Case.**

The facts have been set forth in the foregoing petition, to which reference is made to avoid duplication.

The District Court, in the previous litigation, made two valid orders directing the Petitioner to deposit monthly in the registry of the Court the amounts of tax shown by its monthly returns, before delinquency.

### **Assignments of Error.**

1. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the deposits made by the taxpayer did not constitute payments of taxes, as was held by the District Court.

2. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the deposits made in the previous litigation were in the nature of a cash bond and carried no more significance than the giving of a surety bond, and that such deposits were not payment.

3. The Circuit Court of Appeals for the Ninth Circuit erred in holding that no payment of the taxes in question was made until June 8, 1937.

4. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the petitioner was liable for interest on the amounts of taxes deposited in the registry of the Court in the previous litigation pursuant to valid orders of that Court.

5. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the United States of America was entitled to interest on monies that did not belong to it.

6. The Circuit Court of Appeals for the Ninth Circuit erred in failing to pass upon all questions raised by the Petitioner.

7. The Circuit Court of Appeals for the Ninth Circuit erred in failing to hold that the monies deposited in the registry of the Court in the previous litigation were in *custodia legis* and therefore not subject to interest.

8. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the Petitioner was liable for interest upon the excise tax upon the first domestic processing of cocoanut oil.

### Summary of Argument.

Considerable research has failed to disclose any authority involving a state of facts such as exist in the present case. The monies which were paid into the registry of the Court were paid pursuant to the two orders mentioned on page 4 of the appellant's brief. The first order [R. 30] provided that plaintiff should continue to file monthly returns with the defendant and that it should give security in the amount of the exactions by check payable to the order of the United States District Court and that the check should be deposited in the registry of the Court pending the further order of the Court. The order further provided that the plaintiff should deposit such monthly amounts as might be disclosed by the monthly returns. Under this order three payments were made into the registry of the Court.

The decision of the District Court being adverse to the appellee herein, it took an appeal to the Circuit Court of Appeals for the Ninth Circuit. The District Court then made a second order, above mentioned, which provided that the soap company should continue to file its monthly returns and that it should "deposit in the Registry of the Court on or before the last day of each month the amount of tax disclosed by such returns." [R. 31.]

## ARGUMENT.

### I.

#### **Monies in Custodia Legis Do Not Draw Interest.**

In the previous litigation instituted for the purpose of testing the validity of Section 602½ of the Revenue Act of 1934, the Petitioner, in order to protect its rights in the fund and to forestall the payment of the fund into the hands of the Government of the Philippine Islands, was obliged to procure two orders of the District Court enjoining the collector from collecting the excise tax in question. [R. 29 and 31.] That there was merit to the Petitioner's contention, in that litigation, that the Section was invalid may be inferred from the fact that the Court granted the restraining orders in the face of the prohibition contained in Section 3224 of the Revised Statutes (26 U. S. C. A. Section 3653) against suits restraining the collection of taxes. The exact amount of the taxes shown by the monthly returns of the Petitioner filed with the Collector of Internal Revenue were paid into the registry of the Court under these orders before delinquency, and the monies, therefore, were in *custodia legis* and, following the general rule, should not have drawn interest. [R. 30 and 32.] This procedure was rendered necessary in order to protect the rights of the parties pending the determination by the Court of the validity or invalidity of Section 602½ of the Revenue Act of 1934.

II.

**Where a Litigant Owes a Monetary Obligation and He Pays the Same Into Court Under an Order of Court, the Running of Interest Is Suspended.**

It is a well established principle of law that when a debtor is directed by order of Court, or rule of law, to deposit the amount of the debt in Court, he is relieved of the payment of further interest while the fund remains in the hands of the Court.

In the case of *Thomas v. Western Car Company*, 149 U. S. 95, at p. 116, the Supreme Court said:

“As a general rule, after property of an insolvent passes into the hands of a receiver or of an assignee in solvency, interest is not allowed on the claims against the funds. *The delay in distribution is the act of the law*; it is a necessary incident to the settlement of the estate.” (Italics supplied.)

In the case of *Bowman v. Wilson, Assignee*, 12 Fed. 864, C. C. W. D. Mo., the Court, speaking of bankruptcy proceeding, said:

“Interest is allowed on the ground that the debtor is in default and has the use of the claimant’s money. It is never allowed where, by order of a Court of competent jurisdiction, or by the interposition of the law or the act of the creditor, payment of a debt has been prevented. During the continuance of such prevention, the interest does not run. If a fund is in custody of the law—in possession of the Court—and cannot be paid out without the order of the Court, it does not ordinarily bear interest.” *See, also*, 33 C. J. 244 (152).

To the same effect is *Lilley v. Insurance Company*, 92 Mich. 153, p. 158.

In the case of *Franklin Bank, et al. v. Bruns*, 84 Ohio 12, a fund was paid into Court in compliance with an or-

der of interpleader. It was held that a decree distributing the fund should not bear interest. This case is also reported in *Ann. Cas.* 1912B, at page 1002. To the same effect, also, is the case of *Chase v. Skepner*, 134 Cal. App. 453. A collection of cases on the proposition that interest is suspended when funds are deposited in Court pursuant to an order, will be found at page 1004, *Ann. Cas.* 1912B.

This principle is well exemplified by the practice in condemnation suits where the Government deposits the estimated fair value of lands in the Registry of the Court and a decree of taking is entered at the time of the institution of the litigation. Interest immediately stops on any amount so deposited. If, upon the trial of the case, the award is in excess of the amount deposited, interest will be collectible on the amount of the deficiency and the minute any such deficiency is deposited in the Registry of the Court, interest on such deficiency immediately stops. It needs no citation of authority to establish this fact. The same rule holds true in the case of amounts deposited in interpleader cases and in bankruptcy and receivership cases where a fund is in the hands of the Court and in instances where attachment or trustee process prevents the payment of money. Examples of these types will be found cited in *Ann. Cas.* 1912B, p. 1004.

It may well be asked if the situation of the parties had been reversed in the injunction proceedings, *i. e.*, if the plaintiff in that case had been successful in maintaining that the section in question was unconstitutional, and the fund in the hands of the Court had been returned to the soap company, would the Government agree that the soap company would have been entitled to interest by reason of the loss of the use of the money while it remained in the Registry of the Court?



III.

**The Petitioner Lost the Use of the Monies Paid Into the Registry of the Court.**

Interest may be defined as compensation paid for the use of money or as a penalty for the detention of a debt. (Vol. 22, *Words and Phrases* (Perm. Ed.), pp. 107 and 117.) Neither aspect of this definition is applicable to the present case.

In compliance with the orders of the trial court, the soap company paid into the Registry of the Court the exact amounts of the tax shown by each of its monthly returns. From the moment of the deposit of each such amount, the soap company completely lost the use of that money. Not only did it lose the amount so deposited, but it further cost it the sum of 1% of the amounts so deposited. In this instance, this 1% amounted to \$6,488.75. Therefore it cannot be contended that the interest exacted by the Collector was for the use of the money by the appellee. On the other hand, it can hardly be contended that the interest was exacted on the theory that it was a penalty inflicted for the detention of the monies. The appellee did not detain the monies. It paid the monies, with the exception of the amount pertaining to December, 1935, before they became due. It was the interposition of the orders of the Court which prevented the delivery of the funds direct to the Collector.

It appears significant that while Section 602½(f) of the Revenue Act of 1934 provides for the imposition of penalties, the Collector did not attempt to collect any penalty although he contended the taxes were delinquent. Why he insisted on interest on the theory that the taxes were delinquent, but did not insist upon the payment of a penalty for the same reason, is not altogether clear.

IV.

**The Respondent Did Not Lose the Use of the Monies While They Were in the Registry of the Court.**

The Government of the United States was not entitled to use the monies raised by the imposition of the processing tax imposed by Section 602½ of the Revenue Act of 1934, nor could it use those funds for the defraying of Government expenditures by the very terms of the section. Reference to subsection (a) of Section 602½ of the Revenue Act of 1934 (see appendix) discloses the rather peculiar and unusual provision that follows:

“All taxes collected under this section with respect to cocoanut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund *and paid to the Treasury of the Philippine Islands, \* \* \**” (Italics supplied.)

The processing tax which the Petitioner paid was imposed with respect to the first processing of cocoanut oil which said oil was either wholly the product of the Philippine Islands or was produced wholly from materials grown or produced in the Philippine Islands. [R. 29.] It is quite evident from this provision that Congress did not intend to permit the Government to use for its benefit or to defray its expenditures any of the monies raised by the particular tax in question. On the contrary, it is clear that it was intended that the funds so raised should be earmarked and kept apart from general funds of the United States and be paid over to the Treasury of the Philippine Islands. It is therefore erroneous to say that the Government of the United States was deprived of the use of the funds which were paid into Court by the plaintiff herein. Certainly if it was not deprived of the use of those funds it would not be entitled to interest as a compensation for the loss of the use of the funds.

V.

**The Petitioner Should Not Be Penalized for Exercising Its Right to Question the Constitutionality of Section 602½ of the Revenue Act of 1934.**

It is a self-evident proposition that the Petitioner had the right to institute the proceeding for the purpose of determining the question of whether or not Section 602½ of the Revenue Act of 1934 was constitutional. There was a bona fide doubt as to the constitutionality of that provision. A number of soap companies throughout the United States entertained this doubt because of the peculiar disposition to be made of the funds to be raised by that provision. The contention was made that it did not appear that the imposition of the tax was for the purpose of raising revenue for the general welfare of the United States nor for the purpose of paying its debts as those terms are used in Article I, Section 8, Clause 1 of the Federal Constitution. That this contention was made in good faith is borne out by the fact that the District Court enjoined the collection of the tax during pendency of the proceedings in the lower court, and while the appeal in the Circuit Court of Appeals was pending for the purpose of determining the question of the constitutionality of the section.

While the Petitioner's appeal was pending in the Ninth Circuit, the question was determined in the case of *Cincinnati Soap Company v. United States*, 301 U. S. 308, in which case it was held that the word "debt" was broad enough to include a moral obligation. Very soon after the *Cincinnati Soap* case was decided, counsel for the Petitioner herein advised the Circuit Court of the decision and the decree of the lower court in the injunction case instituted by the plaintiff was promptly sustained. [R. 70.]

VI.

**The Petitioner Should Not Be Penalized for the Delay in Turning the Funds Over to the Collector.**

It will be noted that the total amount paid into the registry of the District Court in the previous litigation under its two orders was \$648,874.54. [R. 32.] Of this amount only \$107,221.49 was paid before trial under the first, or temporary, restraining order. [R. 30.] The balance of \$541,653.05 was paid into the registry of the Court under the *supersedeas* order pending the determination of the issues by the Circuit Court of Appeals. [R. 32.]

The significance of these facts is that the appeal was pending in the Circuit Court for some sixteen months. This long delay was not of the making of the Petitioner herein; it was due to the normal processes of litigation. The legal fiction is that, theoretically, the Court acts instantaneously as of the date of the joinder of issue in the litigation, and the lapse of time between the date that issue was joined and the final determination of the Court is, for all practical purposes, ignored. The fact that an accumulation of business, or a "backlog," in the Circuit Court of Appeals results in a time lag in the ultimate determination of an appeal should not destroy the fiction.

Since the delay in time cannot be laid to the door of the Petitioner herein but was a normal incident to judicial procedures, it seems entirely inequitable to inflict a penalty upon the Petitioner when it had in fact lost the use of the monies just as effectively as if the same had been handed to the Collector of Internal Revenue instead of to the clerk of the District Court.

VII.

**The Circuit Court Erred in Holding That the Amounts Deposited in the Registry of the Court Were Security and Not a Payment of Taxes.**

As pointed out herein, the Circuit Court held that "the deposits were in the nature of a cash bond and carried no more significance than would the giving of a surety bond." [R. 97.] This holding was contrary to the facts of the case. There is a difference in the phraseology of the two orders directing the deposits. The first, or temporary, order provided that the Petitioner "give security in the amount of the said exactions claimed to have become due on the 31st of January, 1936, in the sum of \$28,618.48 \* \* \* and to deposit monthly amounts, hereafter, as may be disclosed by said monthly returns." [R. 30.] The order allowing the appeal as a *supersedeas* provided that the Petitioner "*will deposit in the registry of this Court on or before the last day of each month the amount of tax disclosed by said monthly returns.*" [R. 31.] (Italics supplied.) It was under this latter order that the sums aggregating \$541,653.05 were paid. The only amount which was paid into the Court as security was under the first order, and that was the sum of \$28,618.48, which became due on January 31, 1936. [R. 30.] It is perfectly apparent that the amounts, with the possible exception of the first amount, which were deposited in the Court were the *taxes* and *not a sum of money equivalent to the taxes*. The amounts which were so deposited were the actual subject of the controversy and were not equivalent to a surety bond, and it is respectfully submitted that the Circuit Court of Appeals for the Ninth Circuit fell into error in so holding.

VIII.

**Payment Into the Registry of the Court Constituted  
Payment of the Taxes.**

The Petitioner contends earnestly that the payment of the various amounts into the registry of the Court was, in fact, payment of the taxes. The amounts so paid were paid to an agent of the appellant for the uses and purposes set forth in Section 602½ of the Revenue Act of 1934, and since these payments were made before delinquency, with the exception of one payment relating to December, 1935, interest was not properly collectible upon the amounts so paid.

It is respectfully submitted that the exaction of interest in the instant case was tantamount to a denial of justice and equity to the Petitioner herein.

IX.

**The Circuit Court of Appeals Failed to Rule Upon  
All Questions Raised by the Petitioner.**

The Petitioner raised in the Circuit all of the questions raised herein. The Circuit Court of Appeals, however, passed upon only one of those issues, to-wit, that payment into the registry of the Court under the orders of the Court constituted payment of the tax.

The Petitioner respectfully maintains that it is entitled to have passed upon all the questions which it raised in the lower court for the reason that it maintains that all of the points raised were pertinent to a determination of the case.

It is respectfully submitted that a writ of certiorari should be granted.

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THOMAS A. J. DOCKWEILER,  
*Attorneys for Petitioner.*

FRANK MERGENTHALER,  
*Of Counsel.*







## APPENDIX.

Revenue Act of 1934, c. 277, 48 Stat. 680:

### Sec. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the